

EXHIBIT E

Declaration of Philip P. Mann

Case No. 21-CV-0817-TSZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BUNGIE, INC., a Delaware corporation,)	
)	
Plaintiff,)	CASE NO. C21-00881-TSZ
)	
v.)	Seattle, Washington
)	
PHOENIX DIGITAL GROUP LLC, an)	
Arizona limited liability company;)	May 22, 2024
JEFFREY CONWAY, an individual;)	9:00 a.m.
DAVID SCHAEFER, an individual;)	
JORDAN GREEN, an individual; and)	JURY TRIAL, DAY 3 of 5
JAMES MAY, an individual,)	
)	
Defendants.)	
)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	WILLIAM C. RAVA JACOB P. DINI CHRISTIAN W. MARCELO Perkins Coie 1201 3rd Avenue, Suite 4900 Seattle, WA 98101-3099
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For the Defendants:	PHILIP P. MANN Mann Law Group PLLC 403 Madison Avenue North, Suite 240 Bainbridge Island, WA 98110
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Reported by:	NANCY L. BAUER, CCR, RPR Federal Official Court Reporter 700 Stewart Street, Suite 17205 Seattle, WA 98101 nancy_bauer@wawd.uscourts.gov
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1 Q. Were you aware of any of the other defendants deleting
2 evidence?

3 A. No.

4 Q. But you had wiped your computer?

5 A. I wiped my system.

6 Q. Including your computer?

7 A. My system on the computer. I didn't wipe every single
8 drive.

9 Q. But you wiped several hard drives?

10 A. I wiped the main system off of the computer.

11 Q. You wiped several hard drives?

12 A. That had the system on it.

13 Q. And when you wiped it, what you mean is you removed
14 everything from the hard drives in the computer.

15 A. After I had already moved everything, all my work files and
16 everything to the new computer, I reformatted the old computer,
17 as anyone would if they suspected they'd been compromised.

18 Q. Mr. May, what I'm asking is: When you wiped your hard
19 drive in your computer, you removed everything on it so nothing
20 was left on there.

21 A. I formatted the whole computer.

22 MR. MARCELO: Mr. Blackburn, if you could play a clip
23 from defendant's deposition. This is his March 23, 2023,
24 deposition, page 96, lines 10 through 19.

25 (Video is played.)

1 Q. Good.

2 Now, who is responsible for paying taxes?

3 Let me put it a different way.

4 Does Phoenix Digital withhold taxes for you?

5 A. No, I'm responsible for that.

6 Q. Does Phoenix Digital withhold social security taxes for
7 you?

8 A. No, I'm responsible for that.

9 Q. Does Phoenix Digital provide medical benefits for you?

10 A. No.

11 Q. Does Phoenix Digital provide an office for you?

12 A. No.

13 Q. Where would you work?

14 A. I work in my home office at home.

15 Q. Okay. Now, did Mr. Schaefer ever call you up and say,
16 Mr. May, I'd like you today to do this and that?

17 A. No.

18 Q. Did anybody at Phoenix Digital tell you what hours you
19 needed to work?

20 A. No.

21 Q. Did you have to ask Phoenix Digital whether you could take
22 a week off to go on vacation?

23 A. No.

24 Q. Thank you.

25 Now let's get down to the cheat software that is actually

1 at issue in this lawsuit.

2 Did you create the *Destiny 2* cheat software that was
3 distributed by Phoenix Digital?

4 A. I did not.

5 Q. Did you create or did you attempt to create a cheat for the
6 *Destiny 2* game at one point?

7 A. I attempted to, yes.

8 Q. Okay. Why did you attempt to do that?

9 A. I was interested in how the engine worked.

10 Q. And what did you do? We heard some testimony about you
11 attached --

12 A. ReClass.

13 Q. You attached ReClass.

14 Were you able to complete a successful *Destiny 2* cheat?

15 A. I was not.

16 Q. And why was that?

17 A. Because they banned me over and over again. I wasn't able
18 to reverse engineer anything.

19 Q. Did Mr. Schaefer, or anyone else at Phoenix Digital, ever
20 ask you to develop a cheat for *Destiny 2*?

21 A. They did not.

22 Q. Okay. And the other thing, I believe there was some
23 testimony that Mr. Schaefer would tell you or you needed to ask
24 permission to create a cheat.

25 Did you ever have to ask permission to create a cheat from

1 A. The *Destiny 2* game, no, I have not.

2 Q. Have you ever seen the object code for the *Destiny 2* game?

3 A. I would say the object code is already on the computer when
4 you download the game.

5 Q. But you don't see that, do you?

6 A. When you're running ReClass, you would see the code that's
7 running in the game.

8 Q. Did you copy any of that code?

9 A. No, I did not.

10 Q. Okay. Now, there's some testimony here that you wiped your
11 hard drives. I'd like to get into exactly what you did.

12 When did you take the action you specified about changing
13 your computer?

14 A. Once I got the new computer, I wiped the old one after I
15 copied everything over, because I suspected --

16 Q. Well, let me back up a little bit. I don't mean to
17 interrupt. But let's get the circumstance -- let's get the
18 timing, when you did this and why you did this. Let's start
19 with when you did it.

20 A. Okay. When did I wipe the computer?

21 Q. Yes.

22 A. After I received the new computer.

23 Q. Well, why'd you get a new computer?

24 A. Because I'd felt that it could possibly have been
25 compromised.

1 Q. And what led you to feel that you'd been compromised?

2 A. It was running slower, and sometimes I would get random
3 blue screens.

4 Q. And was that something new?

5 A. Yes. It was not going on before that.

6 Q. Okay. And then what did you do? After you had these
7 suspicions, what did you do?

8 A. I bought a new computer.

9 Q. And then after you bought the new computer, what did you
10 do?

11 A. I wiped the old computer after I copied over all my work
12 files from the old computer.

13 Q. Okay. Now, those files that we saw in that exhibit -- I
14 forget the number -- the 56, with the green screen, all those
15 files, did you preserve those files?

16 A. I did.

17 Q. Tell me what you did to preserve them.

18 A. I had them on my external hard drive.

19 Q. And you did this before you wiped the original computer?

20 A. Correct.

21 Q. Okay. Have you been requested to produce those files?

22 A. Yes.

23 Q. Have you produced those files?

24 A. I did.

25 Q. Are those files, to the best of your knowledge, exactly the

1 same files that were on your computer before you wiped it?

2 A. They're 100 percent the same files.

3 Q. So what exactly got wiped when you wiped the computer?

4 A. The Windows operating system.

5 Q. So you took the Windows operating system off of the old
6 computer, because why? Why'd you do that?

7 A. I took it off because it could have been compromised, and I
8 wanted to get back to a clean slate.

9 Q. Okay. Again, but the actual files, the ones that we see on
10 that green sheet -- Exhibit 56, I believe it is -- you preserved
11 those?

12 A. Yes, they were all preserved.

13 Q. Did you make any changes to those files?

14 A. No.

15 Q. Did you produce those files?

16 A. I did.

17 Q. Do you believe that those files that you produced are exact
18 copies of what was on the computer before?

19 A. They are exact copies.

20 MR. MANN: If I can have a moment, please, Your Honor?

21 THE COURT: Certainly.

22 MR. MANN: Thank you, Your Honor. I have no further
23 questions.

24 THE COURT: Redirect?

25 MR. MARCELO: Briefly.

1 Your wiping of your computer, that was in May of 2022?

2 A. That sounds about right.

3 Q. That's a year after this litigation began?

4 A. Yes.

5 Q. You preserved your reversing-engineer tools?

6 A. Yes.

7 Q. Nothing else, though?

8 A. I preserved every file that was in that document.

9 Q. Right. And as we discussed, those files are either --
10 relates to reverse engineering --

11 A. Yes.

12 Q. -- or components of the AimJunkies' loader?

13 A. Yes.

14 Q. No other files were preserved; that's what I'm asking.

15 A. I preserved all of my work files.

16 MR. MARCELO: Nothing further. Thank you.

17 THE COURT: Anything further?

18 MR. MANN: No recross, Your Honor.

19 THE COURT: All right. You can step down.

20 Let me just explain to the jury.

21 Because Mr. May is a defendant, he'll be called in the
22 defendant's case, at some point. He has a counterclaim against
23 the plaintiff. You'll hear that testimony later in the trial.

24 You may step down.

25 THE WITNESS: Thank you, sir.

1 Did you have a website -- I'm sorry -- an email address
2 admin@aimjunkies.com?

3 A. I did not personally have an address admin@aimjunkies.com.

4 Q. Did you have access to email address admin@aimjunkies.com?

5 A. I don't specifically recall having access to that email
6 account, but the email account may have existed at that time.

7 Q. Turning to page 2 of this exhibit. At some point in time,
8 did you become aware that Bungie had sent a notice to Mr. Conway
9 and/or Mr. Schaefer, very similar to the ones shown here?

10 A. I was aware there was a notice.

11 Q. And were you aware that there was a notice in or about
12 November of 2020?

13 A. I was aware that there was a notice in or about that time.
14 I'm not sure if I read it, though.

15 Q. Have you read it since then?

16 A. Yes.

17 Q. With regard to the *Destiny 2* cheat, Mr. Green, you didn't
18 create it, did you?

19 A. No, sir.

20 Q. You never accessed it, did you?

21 A. No.

22 Q. You never loaded it?

23 A. No.

24 Q. You never used it?

25 A. No.

1 Q. You never played *Destiny 2*?

2 A. I don't believe so.

3 Q. And you never saw anyone use the *Destiny 2* cheat?

4 A. If I saw the *Destiny 2* cheat in action, it was some sort of
5 recorded gameplay or something, like a YouTube video.

6 Q. But you don't remember, one way or the other, if you saw?

7 A. I don't remember if I saw it during that time period.

8 Q. So you have no personal, direct experience with the *Destiny*
9 *2* cheat that is the subject of this case, do you?

10 A. No, I do not.

11 Q. You don't know how it works, do you?

12 A. No.

13 Q. In fact, you'd agree that no one at Phoenix Digital knows
14 how the *Destiny 2* cheat works; isn't that right?

15 A. Yes, that would be correct.

16 Q. Have you heard the name Andreas Banek before, Mr. Green?

17 A. I have.

18 Q. In what context?

19 A. I was made aware of that name in the context of these
20 ongoing proceedings and around the sale of the website.

21 Q. Have you ever had any contact with that person?

22 A. Not directly, no.

23 Q. Have you had indirect contact with that person?

24 A. Something I may have said or contributed or something like
25 that may have been passed along, but not that I'm aware of.

1 you refer to as a Phoenix Digital in-house tool?

2 A. That is correct. We provided that to all the engineers.

3 Q. Right. All the cheat developers got this in-house tool
4 that was connected to reverse engineering?

5 A. I can't -- that would be a stretch. I can't say that.

6 Q. Because you don't know what the tool actually did, right?

7 A. That is correct. Like I said, all I knew is they said we
8 needed driver and we needed to go to Microsoft to get it
9 licensed, and that's what we did.

10 Q. During the time Mr. May was reverse engineering *Destiny 2*,
11 you were aware he was attempted to develop a cheat for the game.

12 A. I may have -- I don't know. I -- how it works for me is,
13 developers will come through the pipeline and say, Hey, there's
14 product available. And if nobody else is offering the product,
15 then we run with the product.

16 I don't remember if Mr. May came to me and said he was in
17 development or not. I can tell you that he never came to me and
18 said he had a completed product. That, I know.

19 Q. Right. But early 2020, Mr. May told you he was working on
20 a cheat for *Destiny 2*.

21 A. I don't remember.

22 Q. Mr. Schaefer, I'm going to pull up your testimony from
23 December 20th, 2022. This is page 148, lines 15 through 17.

24 "QUESTION: And Mr. May, in early 2020, told you he was
25 developing a cheat for *Destiny 2*, right?

1 MR. MANN: Let me rephrase.

2 THE COURT: Just a moment.

3 You'll have a chance to cross-examine the witness. I'll
4 deny what I understand to be your motion to strike.

5 MR. MARCELO: Thank you, Your Honor.

6 MR. MANN: Thank you.

7 Q. (By Mr. Mann) Now, again, Mr. Schaefer, they did ask you
8 for that Bitcoin address?

9 A. Yes.

10 Q. And it was available on the website?

11 A. Yes.

12 Q. Now let's get into some of the accusations, the turning --
13 really, what is the issue before us, copyright infringement.

14 Did Phoenix Digital ever have the source code for the cheat
15 at issue in this case?

16 A. We've never had the source code for any cheat ever.

17 Q. And why is that?

18 A. Because that's not what's used to run the game.

19 Q. Well, let me rephrase it a different way.

20 Can you explain to the jury -- let's say I want to get a
21 cheat for a game. I want to use *Destiny 1* -- 1, 2, 3, whatever.
22 I want to get a cheat for that. I'm sitting at my computer. I
23 go to the AimJunkies' website. Can you walk me through what I
24 would do in order to interact with your website and get access
25 to the cheat that I want?

1 else. That's the program that we've been talking about. Excuse
2 me.

3 So how this works is, just like when you make a purchase
4 and you hit "buy" and it goes to PayPal and the transaction
5 happens at PayPal, and then the communication comes back. It's
6 the same thing with the loader, except for a little different.

7 The customer hits "load," so then the communication goes to
8 the loader.

9 If the engineer has decided that they want to host their
10 cheat locally, you know, on their own computer or on some other
11 computer that they control, they have that option. We had a
12 toggle on there where we could toggle. So if it was hosted on
13 the loader, then it just automatically took it off the loader
14 and sent it to the customer.

15 And the engineers decided that he didn't -- and sometimes
16 they just don't trust them being stored there for being hacked,
17 they store it locally, then the loader makes a call to their
18 website -- or to their server, wherever that is at, and then the
19 cheat is passed over to the loader, and then from the loader to
20 the customer.

21 There's a little bit of lag involved in that, but it gives
22 the engineers a little more peace of mind that we don't have
23 their DLL.

24 Q. And it's never in the possession of Phoenix Digital,
25 correct?

1 A. Never. We've never had a cheat that's been in our
2 possession, ever.

3 Q. Okay. Do you recall in the -- I believe it might have been
4 yesterday, Phoenix Digital was accused of refusing to provide a
5 copy of the cheat software. Do you recall that testimony?

6 A. Yes, I do.

7 Q. Okay. Did you refuse to provide a copy of the cheat
8 software?

9 A. I can't provide a copy of the cheat software if I don't
10 have it, and I never had it. I've never had a copy of any of
11 the cheats that we've ever sold.

12 Q. And, in fact, you took down the *Destiny 2* cheat software
13 from the AimJunkies site in very early 2021, correct?

14 A. Okay. We're back to dates.

15 Q. Shortly after you received the cease and desist letter.

16 A. Yes.

17 Q. Thank you.

18 Now, let's get into a little bit of the dollars associated
19 here.

20 You were here when Mr. Voth testified as to the overall
21 gross sales of the *Destiny 2* cheat software, correct?

22 A. Yes.

23 Q. And he testified that, as a result of his thorough
24 examination, he determined approximately \$43,000 and change were
25 the gross sales of the *Destiny 2* cheat software?